

Exhibit USAbt-I

Santa Fe, NM

Page 1

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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In Re: PHARMACEUTICAL INDUSTRY) MDL No. 1456
AVERAGE WHOLESALE PRICE LITIGATION) Master File No.
-----) 01-CV-12257-PBS

THIS DOCUMENT RELATES TO:)
United States of America ex rel.) Hon. Patti B.
Ven-A-Care of the Florida Keys,) Saris
Inc., et al., v. Dey, Inc., et al.,)
Civil Action No. 05-11084-PBS;)
and United States of America ex) DEPOSITION OF
rel. Ven-A-Care of the Florida) THE NEW MEXICO
Keys, Inc., et al., v. Boehringer) DEPARTMENT OF
Ingelheim Corp., et al., Civil) HUMAN SERVICES
Action No. 07-10248-PBS;) by ROBERT J.
and United States ex rel. Ven-A-Care) STEVENS
of the Florida Keys v. Abbott)
Laboratories, Inc., Civil Action) DECEMBER 15,
Nos. 06-CV-11337 and 07-CV-11618) 2008
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Henderson Legal Services, Inc.

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Santa Fe, NM

Page 305

1 to is the survey done by Mr. Ricks which was done
2 prior to the increase to \$4, correct?

3 A. I believe that's true, yes.

4 Q. If you'll look at the next page which
5 is Bates No. 0072, is that a true copy of the
6 state plan amendment effective January 6, 1992?

7 A. Yes, it is.

8 Q. And was that plan amendment approved by
9 the federal government?

10 A. Yes, it is. I might point out that
11 there is a typo at the top of the page that says
12 1991. But it is actually 1992 as you can see on
13 the CMS HCFA stamp on the side of the document.

14 Q. Okay. And it was approved by HCFA on
15 November 13, 1992?

16 A. Yes.

17 Q. What was amended?

18 A. The dispensing fee was lowered to \$4.

19 Q. Okay. And what was the reason or the
20 reasons for the change?

21 A. I believe that the reason was that the
22 administration at that time felt that more

Santa Fe, NM

Page 306

1 attention should have been paid to the dispensing
2 fees that were being paid by other payers in the
3 state. And so they suggested going back to the
4 amount of \$4.

5 Q. Okay. And the -- when you say the
6 administrators felt that based on dispensing fees
7 paid by other payers in the state, do I
8 understand you to mean that those dispensing fees
9 at least on average were less than what New
10 Mexico was paying at the time?

11 A. Yes.

12 Q. If you take a look at the next two
13 pages, Bates Nos. 0068 and 0071, are those true
14 copies of the state plan amendment approved by
15 the federal government in April of 19 -- 18,
16 excuse me. In April of 1998?

17 A. Yes, they are.

18 Q. Okay. And what -- what was the -- what
19 was amended? And I'll refer your attention to
20 the estimated acquisition cost which is on the
21 first page of the plan amendment.

22 A. Yes, the estimated acquisition cost

Santa Fe, NM

Page 316

1 (Exhibit US-NM 007 marked.)

2 BY MR. RIKLIN:

3 Q. Mr. Stevens, the court reporter has
4 handed you U.S. New Mexico Exhibit 7 which
5 appears to be a copy of a memo from the director
6 of the Medicaid Bureau of Health and Human
7 Services dated -- or stamped August 12, 1994.
8 Have you seen that document before?

9 A. Yes, I do believe I've seen it before.

10 Q. Take a look at page 2, the next to last
11 paragraph, beginning "We would also clarify our
12 policy that a dispensing fee determination must
13 be separate and distinct from the EAC
14 determination and unrelated to the cost of the
15 drug product. In every instance, regardless of
16 the state determination of individual
17 prescription payment limits, the state must have
18 established the reasonable dispensing fees which
19 would be used to determine whether the state is
20 in compliance with the upper limits as specified
21 in current drug regulations at 42 CFR 447.331"
22 did I read that correctly?

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Santa Fe, NM

Page 317

1 A. Yes.

2 Q. Are you familiar with that federal
3 government policy?

4 A. Yes.

5 Q. Is your agency's reimbursement
6 methodology consistent or inconsistent with this
7 policy?

8 MR. JULIE: Objection to form.

9 THE WITNESS: It's consistent with that
10 policy.

11 BY MR. RIKLIN:

12 Q. When New Mexico established a new EAC
13 based on a discount off AWP, did it base that
14 determination in any way on the cost of
15 dispensing drugs?

16 MR. JULIE: Objection to form.

17 THE WITNESS: No, we did not.

18 BY MR. RIKLIN:

19 Q. Conversely when your state established
20 a new dispensing fee, did it make that
21 determination based in any way on the acquisition
22 cost of the drug?

Santa Fe, NM

Page 318

1 MR. JULIE: Objection to form.

2 THE WITNESS: No, we do not.

3 BY MR. RIKLIN:

4 Q. Does New Mexico have any practice or
5 policy of paying inflated acquisition costs in
6 order to make up for inadequate dispensing fees?

7 A. No, we have specifically and
8 intentionally not done that over the years.

9 MR. JULIE: Objection to form.

10 BY MR. RIKLIN:

11 Q. And, in fact, you have previously
12 testified that in your opinion the dispensing
13 fees that New Mexico has enacted over the years
14 are reasonable fees, correct?

15 A. Yes.

16 Q. Mr. Stevens, does your fiscal agent
17 investigate the published drug pricing for
18 accuracy?

19 MR. JULIE: Objection to form.

20 THE WITNESS: No, they don't.

21 BY MR. RIKLIN:

22 Q. Do the employees in your pharmacy

Santa Fe, NM

Page 322

1 BY MR. RIKLIN:

2 Q. If a drug manufacturer had done that,
3 would your agency have approved that method of
4 increasing reimbursement?

5 MR. JULIE: Objection to form.

6 THE WITNESS: We would not have
7 approved of it. It would be very difficult to
8 interrupt our actual methodologies for pricing
9 which take place automatically. But I believe,
10 if I would have seen that information, I would
11 have reported it to our regional office in
12 Dallas.

13 BY MR. RIKLIN:

14 Q. Has your agency ever given drug
15 manufacturers the authority to decide whether
16 dispensing fees are inadequate?

17 MR. JULIE: Objection to form.

18 THE WITNESS: No.

19 BY MR. RIKLIN:

20 Q. Who has that authority?

21 A. The state actually has the authority to
22 do that and then must usually justify it when --

Santa Fe, NM

Page 323

1 to the federal people when filing a state plan
2 amendment.

3 Q. In your opinion would it be prudent to
4 give that sort of authority to drug
5 manufacturers?

6 MR. JULIE: Objection to form.

7 THE WITNESS: No, that would not.

8 BY MR. RIKLIN:

9 Q. Why not?

10 A. Well, because again I don't think they
11 would be looking at it from the perspective of
12 the Medicaid program. And it's actually the
13 Human Services Department that's designated by
14 the federal government as the single state agency
15 for enforcing the Medicaid program rules.

16 Q. Did New Mexico ever approve of any
17 manufacturer reporting and causing the
18 publication of falsely inflated AWP's?

19 MR. JULIE: Objection to form.

20 THE WITNESS: No.

21 (Exhibit US-NM 008 marked.)

22 BY MR. RIKLIN: